IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1669 OF 2004

Akhil Bhartiya Shramik
Kamgar Union. ...Petitioner

vs.

1. M/s.Universal Corporation
and others. ...Respondents.

Mr.A.D.Shetty with Ms.Rita Joshi, for Petitioner.

None for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 3rd August, 2006.

P.C.:-

1. By this petition, the petitioner challenges the order passed by the Industrial Court dated 31.3.2004 in Complaint (ULP) no.790 of 1999. That complaint was filed under the provisions of Unfair Labour Practices Act by the trade Union representing the employees of the respondent-company. In principal, the complaint was that the employees of

the respondent are not being paid their wages nor are they being given any work from May,1999. Therefore, a direction from the Industrial Court was sought to the employer-respondent to provide regular work to the workmen whose names are enlisted in the list at Annexure “A” to the main complaint and to pay wages to those workmen.

2. It appears from the order that the respondent-employer was not disputing its liability to make payment of wages to the workmen whose names are enlisted in Annexure “A”. However, the employer has expressed its inability to make payment because the entire property of the respondent, according to the respondent, was initially in the hands of the Receiver appointed by this Court and thereafter in the hands of the Receiver appointed by the Debt Recovery Tribunal. It appears from the order that the Industrial Court has directed the complainant to join the Receiver as a party to the complaint. In my opinion, any such direction is totally uncalled for. The Industrial Court was not concerned with the recovery of the amount that was due to the

complainant. At this stage, the Industrial Court is concerned with what is the entitlement of the workmen to receive wages which they were claiming through the complaint and for working out the entitlement of the workmen presence of Receiver of the Court is not necessary and is uncalled for.

3. Perusal of the order of the Industrial Court shows that the only reason that has been given by the Industrial court for dismissing the complaint filed by the Trade Union is that the Receiver has been appointed on the property of the respondent employer and that the Receiver is not before the Industrial Court. In my opinion, the order shows total non application of mind by the Industrial Court to the issue that was involved in the complaint. Perusal of the order of the Industrial Court shows that the Industrial Court has not decided on the entitlement, as to how much wages each of the worker whose names are enlisted at Annexure “A” were entitled to, for what period the wages were to be paid, because according to the Industrial Court the Court Receiver was not joined as a party to the complaint before the

Industrial Court. In this view of the matter therefore, in my opinion, the order passed by the Industrial Court which is impugned in the petition is required to be set aside. It is accordingly, set aside. The complaint (ULP) NO.790 OF 1999 is remitted back to the Industrial Court. The Industrial Court shall permit the Complainant to amend its Complaint and thereafter, decides the amended complaint in accordance with law.

4. The Industrial Court shall decide the entitlement and quantum of wages to which each employee whose name is enlisted at Annexure “A” is entitled, in accordance with law.

5. It is clarified that for taking this decision, presence of the Court Receiver before the Industrial Court is not at all necessary.

6. The Industrial Court shall decide the complaint as expeditiously as possible.

7. Rule is made absolute accordingly. No order as to costs.